

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

**CYTEC PROCESS MATERIALS (CA),
INC.**

Respondent,

Case No. 21-CA-187639

Case No. 21-CA-191718

Case No. 21-CA-196463

And

**INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE
WORKERS, AFL-CIO, DISTRICT
LODGE 725**

Charging Party.

RESPONDENT CYTEC PROCESS MATERIALS (CA), INC. POST-HEARING BRIEF

(Before Administrative Law Judge John T. Giannopoulos)

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INTRODUCTION

At its core, this is a bargaining case. Between February and April 2016, the International Association of Machinists and Aerospace Workers, District Lodge 725 AFL-CIO (the “Union” or the “IAM”) organized four separate and distinct bargaining units at the Respondent’s Santa Fe Springs, California facility. Prior to beginning bargaining for these small, “micro,” units, the parties, through their representatives, established ground rules regarding the sequence of bargaining. The parties agreed to negotiate contracts on a unit by unit basis beginning with the unit of Technology Department employees – the first unit certified. After the parties reached a contract with that unit, they would move on to the second unit certified by the Board, and then the third unit, and then the fourth.

This agreement was intended to facilitate bargaining, because the Company and the Union expected that the collective bargaining agreement for the Technology Department would form the basic framework of the collective bargaining agreements for the other bargaining units. From August to December 2016, Cytec and the IAM bargained pursuant to this agreement.

In December 2016, however, the IAM demanded to bargain contracts simultaneously for all of the bargaining units. The IAM’s demand coincided with Cytec’s refusal to combine the Technology Department bargaining unit with a new, fifth bargaining unit organized by the Union, a position ultimately vindicated by the Board. The Union repudiated the parties’ agreement in order to pressure Cytec to accept their permissive demand to expand the scope of the Technology Department bargaining unit.

Cytec has not refused to bargain with the IAM or refused to recognize the Union. The Company has always been willing to meet at reasonable times. The Company has merely continued to abide by the parties’ agreement that was designed to streamline bargaining and make reaching agreements easier for all the units. In light of the totality of the circumstances, including

the Union's decision to organize the facility in multiple, small units, Cytec's proposal to bargain the contracts sequentially, beginning with the Technology Department, not only complies with its obligations under Section 8(d) of the Act, but must be said to be consistent and supportive of the purposes of the Act to support collective bargaining and promote labor stability.

STATEMENT OF FACTS

1. BACKGROUND INFORMATION ABOUT CYTEC

Cytec Process Materials (CA), Inc. ("Cytec") is a specialty chemicals and materials technology company. The Company operates a manufacturing facility in Santa Fe Springs, California that manufactures composite materials for the aerospace and energy industries. In December 2015, before any of the relevant events in these cases, Cytec was acquired by Solvay S.A., a Belgium corporation with its headquarters in Brussels.

2. THE IAM ORGANIZES CYTEC'S SANTA FE FACILITY

In 2016, the IAM organized Cytec's Santa Fe Springs, California facility. Between February and April 2016, the IAM filed four separate RC petitions to represent four separate bargaining units of Cytec employees. (JX 1(a), 1(d), 1(g), 1(j)). After elections conducted pursuant to stipulated election agreements, the Union was certified as the bargaining representative for the following units:

- All full-time and regular part-time machine operators in the Technology Department (Case No. 21-RC-169014; certification issued on February 23, 2016) (JX1(c));
- All full-time and regular part-time conversion specialists in the Manufacturing Department (Case No. 21-RC-170453; certification issued on March 16, 2016) (JX1(f));
- All full-time and regular part-time quality assurance inspectors (Case No. 21-RC-171889; certification issued on April 14, 2016) (JX1(i)); and
- All full-time and regular part-time receiving clerks, shipping clerks, forklift drivers/order pullers, and packers in the Shipping/Receiving

Department (Case No. 21-RC-171856; certification issued on April 14, 2016) (JX1(l)).

There are approximately ten bargaining unit employees in the Technology Department (Trs. 22); fifteen bargaining unit employees in the Manufacturing Department (which is sometimes called the Conversion Department (Trs. 23); four bargaining unit employees in the Quality Assurance Department (Trs. 23-24); and seven bargaining unit employees in the Shipping/Receiving Department. (Trs. 24).

3. **THE IAM AND CYTEC AGREE TO NEGOTIATE ON A UNIT BASIS BEGINNING WITH THE TECHNOLOGY DEPARTMENT**

Following the certification of the above units, on May 6, 2016, the Union, by its business representative Stephen Van Wie, set its initial demand to bargain initial collective bargaining agreements for these micro-units. (JX1(v)). The Union's initial demand was to bargain for all four units. The Union's preference was to negotiate a single contract that applied to all four bargaining units. (Trs. 208).

Subsequently, Gerald Prete, Solvay's NA Labor Relations Director, had two telephone conversations with Mr. Van Wie regarding how Cytec and the Union would negotiate initial collective bargaining agreements for these micro-units. (Trs. 301). In the first telephone conversation, Mr. Van Wie again requested that the parties negotiate one contract that would cover all four bargaining units. (Trs. 301-303). Mr. Prete rejected that proposal and countered that Cytec "wanted to negotiate the technology group first because that was the first one that was organized." (Trs. 303). After reaching an agreement for the Technology Department, the parties would then proceed to the next unit and the next until agreements were reached for all the units, understanding that the first agreement would provide the framework for subsequent agreements and streamline bargaining. Mr. Van Wie reluctantly agreed to Mr. Prete's proposal. (Trs. 303).

Mr. Prete and Mr. Van Wie had a second telephone conversation about a week after the first conversation. (Trs. 303). During that short conversation, Mr. Prete confirmed that the parties would begin by bargaining for the Technology Department and Mr. Van Wie agreed. (Trs. 304). The parties established dates and times to begin bargaining in August. (Trs. 304).

4. THE PARTIES MEET TO BARGAIN FOR THE TECHNOLOGY DEPARTMENT AND THE UNION AGAIN REQUESTS COORDINATED BARGAINING FOR ALL THE BARGAINING UNITS

The parties met to begin negotiations for the Technology Department on August 9, 10, and 11, 2016 at a hotel in Southern California. (Trs. 32). Mr. Van Wie was the Union's chief spokesperson. (Trs. 32). Assisting Directing Business Representative David Brewer, and two committee members, Gonzalo Fragoza and Alonso Barragan also represented the Union at the bargaining table. (Trs. 32). Mr. Prete served as the Company's chief spokesperson. (Trs. 33).

During these first three days of bargaining, several "side bar" conversations occurred between Mr. Van Wie and Mr. Prete. (Trs. 39-40). In one of these conversations, the parties' agreement regarding how they would bargain contacts for the four units was discussed. (Trs. 40, 305-308). Mr. Van Wie testified that he "stated that if the Company didn't want to negotiate them together and they want to do them separately we would then have to open up those negotiations immediately and separately," and that Mr. Prete responded with a shrug of the shoulders. (Trs. 40).

Mr. Prete remembers that conversation differently:

Q So in this sidebar conversation what was said?

A We talked about how we wanted to conduct negotiations. We talked -- Mr. Van Wie initially wanted to -- brought up that he wanted to have all the bargaining units represented, and I reminded him, no, that the agreement was just for the technology group only.

Q And how did Mr. Van Wie then respond to that statement?

A He agreed, and we proceeded to start negotiations.

Q And how did he agree?

A By saying I agree.

(Trs. 308).

Despite the differences in accounts of that sidebar, it is undisputed that following this sidebar that the parties bargained on August 9, 10, and 11 for the Technology Department unit only. (Trs. 37-38; 161-162). In late September 2016, the parties met again for another three days to continue to bargain for the Technology Department unit. (Trs. 43).

5. THE IAM ORGANIZES THE SOURCE ONE BARGAINING UNIT

On October 11, 2016, the Union filed an RC petition for a fifth unit comprised at Santa Fe Springs of all joint employees of Source One Staffing and Cytec. (JX1(n)). The Board conducted an election on October 27, 2016, and a majority of voters cast their ballots in favor of representation by the IAM. On November 14, 2016, the Regional Director issued a Certification of Representative certifying the IAM as the bargaining representative for the unit:

INCLUDING: All full-time and regular part-time employees jointly employed by Cytec Process Materials (CA), Inc. and Source One Staffing, LLC at Cytec Process Materials (CA), Inc.'s facility currently located at 12801 Ann Street, Santa Fe Springs, California 90670.

EXCLUDING: All other employees of either Cytec Process Materials (CA), Inc. or Source One Staffing, LLC office clerical employees, professional employees, managerial employees, confidential employees, guards and supervisors as defined in the Act.

(JX1(o)).

6. **THE IAM CONDITIONS ALL BARGAINING FOR THE TECHNOLOGY DEPARTMENT ON INCLUDING THE SOURCE ONE UNIT AND BREAKS THE PARTIES AGREEMENT BY DEMANDING TO BARGAIN SIMULTANEOUSLY FOR ALL FOUR UNITS**

Cytec and the IAM had scheduled another three days of bargaining for the Technology Unit beginning on December 13, 2016. (Trs. 45-46). Prior to the commencement of bargaining on December 13, however, the parties disagreed as to the scope of the bargaining unit. The Union believed that the Source One election had been an *Armour Globe* election, and that the Source One employees had voted to join the Technology Department unit. (Trs. 47-54). Cytec, relying on the plain language of the Regional Director's Certification of Representative (JX1(o)), took the position that the Source One unit was a separate, fifth, bargaining unit at the facility. (Trs. 47-54) The Union insisted on bargaining for a combined unit of Technology Department employees and Source One employees. Cytec's bargaining team expressed its desire to continue bargaining for the Technology Department bargaining unit alone. (Trs. 47-54) Because the parties could not agree on the scope of bargaining, negotiations broke down on December 14, and the parties did not meet on December 15.

On December 14, the IAM, in apparent response to the breakdown in negotiations, demanded, by letters from Mr. Van Wie, to meet to bargain initial contracts for the other bargaining units certified in the Spring of 2016. (JX1(x)).

7. **THE REGIONAL DIRECTOR ISSUES AN IMPROPER CORRECTED-CERTIFICATION OF REPRESENTATIVE**

On December 16, 2016, the Regional Director issued a "Corrected-Certification of Representative" that included the following language:

Because a majority of valid ballots were cast for INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 725, the employees in the unit described above are included in the

existing unit of all full-time and regular part-time machine operators in the Technology Department currently represented by INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 725.

(JX1(q)). Cytec filed a Request for Review on January 26, 2017 with the Board appealing the Regional Director's corrected certification. (JX1(r)).

8. **THE IAM CONDITIONS ALL BARGAINING FOR THE TECHNOLOGY DEPARTMENT ON THE INCLUSION OF THE SOURCE ONE EMPLOYEES, AND CONTINUES TO REPUDIATE THE PARTIES' AGREEMENT TO COMPLETE NEGOTIATIONS FOR THE TECHNOLOGY DEPARTMENT FIRST**

On or about January 10, 2017, Mr. Prete responded in writing to Mr. Van Wie's bargaining demands for the other three bargaining units. (JX1(y)). Mr. Prete reminded Mr. Van Wie of the parties' agreement and the rationale behind the agreement:

As previously advised, Cytec and the Union agreed to negotiate initial CBA's for the bargaining units one at a time, in the order that they were certified by the Board. Indeed, over the past five (5) months, we have met on eight (8) days, to negotiate a CBA for the Machinists in the Technology Department bargaining unit at Santa Fe Springs. Our progress toward a CBA was abruptly interrupted when you insisted that any further negotiations be conditioned on the Company agreeing to include SourceOne temporary employees in the bargaining unit. Relying on our agreement and practice, the Company is not yet prepared to meet and negotiate contracts for the other bargaining units at this time. We continue to believe that the parties agreement to work on and finish this first agreement before starting the second agreement is in the parties' best interests. The likelihood is each successive agreement should take less time to bargain.

(JX1(y)).

On January 13, 2017, Mr. Van Wie responded to Mr. Prete's letter. (JX1(z)) As for the Technology Unit, Mr. Van Wie could not have been any clearer in conditioning all bargaining on the inclusion of the Source One employees and the Technology Department in a single unit with a single contract:

To be clear, the Union's position is that the Source One workers voted in an Armour Globe election to be included into the Technology Department. . . . The Union's position remains unchanged, Technology and Source One are one bargaining unit. As such, all proposals moving forward will address them as one bargaining unit.

JX1(z)) (Emphasis added).

As for the other Santa Fe Springs bargaining units, Mr. Van Wie continued to abrogate the parties' agreement and insist that the parties meet to bargain contracts for all of the Santa Fe Springs units simultaneously. (JX1(z)). He informed Mr. Prete that the contracts would be bargained by separate IAM business agents, and he proposed the same identical set of dates for each of the bargaining units. (JX1(z)).

On January 20, 2017, Mr. Prete responded again to Mr. Van Wie by letter. (JX1(aa)). The Company's position had not changed either. Mr. Prete wrote that the Company "remains committed to continuing to negotiate an initial contract with the Machinists in the Technology Department, the bargaining unit created first in time." (JX1(aa)).

In his response on February 7, 2017, Mr. Van Wie continued to insist on bargaining all the contracts simultaneously, despite the parties' agreement and past practice. (JX1(bb)).

The parties did not exchange correspondence again until March 20, 2017 when Mr. Prete again wrote to Mr. Van Wie. (JX1(cc)). Mr. Prete wrote in response to the IAM's mischaracterizations and inaccurate statements to the bargaining units blaming the Company for lack of progress at the bargaining table. Mr. Prete expressed his opinion that the Union's insistence on including the Source One employees in the Technology Department unit and the IAM's repudiation of the parties' agreement had been responsible for derailing negotiations after the parties had made so much initial progress. (JX1(cc)). In conclusion, the Company again, "asks

that the union return to the table to complete the negotiations with regard to the technology group.” (JX1(cc)).

9. THE UNION CONTINUES TO PRESS FOR COORDINATED BARGAINING UNTIL THE BOARD GRANTS CYTEC’S REQUEST FOR REVIEW

Following several telephone calls between the gentlemen, on March 23, 2017, IAM representative Dave Brewer sent an e-mail to Mr. Prete and expressed the Union’s ultimate goal and preference that that “it would be prudent to amalgamate all classifications under one common CBA.” (R. Ex. 1).

Following several additional telephone conversations, Mr. Brewer and Mr. Prete exchanged additional correspondence expressing their positions. (JX1(dd) and JX 1(ee)).

In the meantime, on April 4, 2017, the Board issued a Decision and Order granting Cytec’s Request for Review, vacating the Regional Director’s certification, and remanding the Source One election to Region 21 for a new election. (JX1(t)). The Union subsequently withdrew the RC petition for the Source One employees. (Trs. 29; JX1(u)).

Following the Board’s Decision and Order, the IAM finally agreed to meet with the Company to continue negotiations for the Technology Department unit. (Trs. 336). As of the hearing, the parties had met on more than twenty days to work on an agreement for the Technology Department unit. (Trs. 336).

The parties continued to bargain after the hearing and reached agreements for all four collective bargaining units. The employees of the Technology Department ratified their contract on October 24, 2017. Cytec and the Union merged the other units into a single contract, which was ratified on November 10, 2017.

10. THE COMPANY AND THE UNION AGREE TO CHANGES IN THE STARTING AND BREAK TIMES FOR UNION REPRESENTED EMPLOYEES

In early 2017, the starting time for first shift employees represented by the Union started at 6 a.m. (Trs. 392). Paul Pleskacz, Production Area Leader at the Santa Fe Springs facility, met with Alonso Barragan, one of the two union stewards at the facility, “to get his input” on the idea of moving the start time for Conversion Department employees to 5 a.m. (Trs. 394). Not only did Mr. Barragan not object to the proposal, or request further bargaining on the issue, he responded that “it sounds good. There’s a lot of folks that commute pretty far to the workplace.” (Trs. 395). Mr. Pleskacz then presented the change to Conversion Department employees in the presence of Mr. Barragan and Gonzalo Fargoza, the other union steward in the facility. (Trs. 396-397).

Shortly after agreeing to the change in start times for Conversion Department employees, Alonso Barragan approached Mr. Pleskacz and requested the Company change the start times for Technology Department employees as well. (Trs. 401). Mr. Pleskacz testified that Mr. Barragan said, “we like what we’ve done over there with the conversion department. We will like to have same thing in the technology department.” (Trs. 402). Mr. Pleskacz agreed to discuss Mr. Barragan’s proposal with management, and, after receiving approval, the starting time for Technology Department employees changed to 5 a.m. (Trs. 403-404).

These changes in start times became effective in mid to late March 2017. Reyna Peralta became Human Resources Manager at the Santa Fe Springs facility on Monday, March 13, 2017. (Trs. 419). Both Mr. Pleskacz and Ms. Peralta testified that the changes took place shortly after starting her new role at the facility. Ms. Peralta remembers that the change in start times was discussed in a weekly site leadership meeting during her first week on the job. (Trs. 420-421). Mr. Pleskacz testified the changes to the starting times for Conversion Department employees

began on Monday, March 20, 2017. (Trs. 399). Mr. Pleskacz testified that he believed that Mr. Barragan approached him regarding the Technology Department employees several days later on March 23, 2017 (Trs. 402), and that the changed starting time for Technology Department employees became effective on March 27, 2017. (Trs. 402).

The decision to change the start times caused Ms. Peralta concern. (Trs. 421). According to Ms. Peralta, her understanding of California law required meal periods to be taken before the fifth hour of the commencement of their shift and rest periods to be taken within two hours of the start of their shift and two hours after the end of their meal period. (Trs. 422). In fact, Ms. Peralta testified that she believed that the Company was already not in compliance with California law when she started, because the employees began work at 6 a.m. and did not take lunch until 11 a.m., at the end of their fifth hours of work. (Trs. 422-424).

Ms. Peralta, therefore, met with Gonzalo Fargoza and Alonso Barragan, the Union's two stewards to discuss her concerns and the implications for the change in the starting times for union represented employees. (Trs. 425). In a meeting in the training room at the facility, Ms. Peralta described to them the changes to the break times that she believed needed to be implemented. (Trs. 425). Mr. Fargoza and Mr. Barragan told her that they understood why the changes needed to be made. (Trs. 425). Neither union representative expressed any reservations. (Trs. 425-426). The Union stewards did not request or demand that Ms. Peralta meet with a union business agent or any other union employees to discuss these changes. (Trs. 426). In that meeting, Ms. Peralta and the Union stewards also discussed a new work rule that prohibited employees from leaving Company property during their paid rest breaks. (Trs. 442-443). That new work rule became effective at the same time as the new start times for conversion and technology department employees. (Trs. 441-442).

11. UNION MEMBERS AUTHORIZE AND CONDUCT A TWO-DAY STRIKE

The Union conducted a two day strike at the Santa Fe Springs facility beginning on March 31, 2017. After striking on Friday, March 31 and the following Monday, April 3, the employees returned to work on April 4, 2017. (Trs. 112). The day before the strike, March 30, the Union conducted a strike vote. (Trs. 113). The vote occurred between 11:00 a.m. and 11:30 a.m., during the lunch hour for first shift employees. (Trs. 113). Approximately 25-30 employees attended the meeting which took place on the property of another company directly across the street from Cytec's facility. (Trs. 113-114).

During the Union meeting, several witnesses for the General Counsel testified seeing individual Company employees identified as Charlie Schreier and Chris Johnson standing by Mr. Schreier's car in the parking lot of Cytec's facility. (Trs. 230-232; 270-272).¹ The individual identified as Mr. Schreier stood by his car for approximately 15 minutes talking on his cell phone being joined by Mr. Johnson. (Trs. 271). A Union representative took a picture of Mr. Schreier standing by his vehicle. (Trs. 123-124; Trs. 272), (GC 17).

ARGUMENT

II. CYTEC AND THE UNION ESTABLISHED REASONABLE BARGAINING GROUND RULES UPON WHICH CYTEC WAS ENTITLED TO RELY

A. Board law recognizes that parties may establish reasonable ground rules to facilitate reaching an agreement

The Board has recognized that parties engaged in collective bargaining may establish ground rules to facilitate their negotiations to reach an agreement. *Detroit Newspapers*, 326 NLRB 700, 704 (1998). In fact, the Board has found that a party's refusal to adhere to ground

¹ Charlie Schreier is Solvay's Senior Manager for NA Logistics and Chris Johnson is a Logistics Operating Leader. Cytec admitted that both gentlemen are supervisors as defined by the Act. (GC Ex. 1(kk)).

rules is an indicia of unlawful bad faith bargaining. *Harowe Servo Controls*, 250 NLRB 958, 959 (1980) (Board finds that "[r]epudiating the agreement to bargain about and settle noneconomic matters before negotiating the economic provisions of a collective-bargaining agreement" is an indicia of bad faith bargaining); *Natico, Inc.*, 302 NLRB 668 (1991) (parties' agreement to implement an incentive wage proposal for a trial period in order to enable both parties to determine whether it should be included in the collective-bargaining agreement was an agreement by the parties on how to proceed with negotiations that was not subject to repudiation); *Central Maine Morning Sentinel*, 295 NLRB 376 (1989) (employer unlawfully unilaterally eliminated established wage increase where "the parties had agreed on ground rules under which bargaining over economic issues would be postponed until after noneconomic issues were resolved, and the Respondent did not seek to bargain over a change in those ground rules").

Of course, the Board has also recognized that adherence to negotiating ground rules may not be insisted upon to the point that the ground rules undermine the negotiating process or is relied upon to justify bad faith bargaining. *Adrian Daily Telegram*, 214 NLRB 1103 (1974). The primary question, as identified by the Administrative Law Judge in *Beacon Sales Acquisitions, Inc.*, 357 NLRB 789, 797 (2011) is whether the ground rules "that made sense for bargaining when entered into, have come to thwart or become a stranglehold on the bargaining process at a later date."

B. Cytec and the Union established ground rules regarding the order of bargaining for the four units at the Santa Fe Springs facility

The IAM organized four separate bargaining units at Cytec's Santa Fe Springs facility over a two-month period. Faced with negotiating a collective bargaining agreement for each unit, Cytec and the IAM established ground rules regarding how they would negotiate contracts for the units.

This agreement was reached in the two telephone calls between IAM Business Representative Stephen Van Wie and Gerald Prete in June 2016. The Union, through Mr. Van Wie, first proposed to negotiate a single master contract that would apply to all four bargaining units. The Company, through Mr. Prete, rejected this proposal.² Mr. Prete presented the Company's proposal that the parties first meet to negotiate an agreement for the Technology Department, the first of the bargaining units certified. After reaching an agreement on a contract for that unit, the parties would then move on to the second bargaining unit and then to the third unit and then the fourth unit. In these telephone conversations, Mr. Van Wie agreed to proceed as Mr. Prete proposed.

At the hearing, Mr. Van Wie denied making any such agreement. Mr. Van Wie's denials are not credible. As an initial matter, Mr. Van Wie vacillated on cross-examination whether the issue of the sequence of bargaining had been even discussed on these telephone calls. First, he denied the topic had been discussed and then tried to deflect the question, prompting an interjection by the Administrative Law Judge:

Q Did Mr. Prete tell you in those conversations that he wanted the Company's proposal was to bargain for the technology unit first and then after the technology unit reach agreements for the other parties', other agreements?

A There was no such conversation of that, sir.

Q None? And none of the --

A And that is my recollection.

Q -- and neither -- and no telephone conversation with Mr. Prete in June?

² As Mr. Van Wie acknowledged at the hearing, the IAM's proposal to bargain a master agreement was a permissive subject of bargaining that the Union could not insist upon. *Boston Edison Co.*, 290 NLRB 549, 553 (1988)(the "scope of an established bargaining unit is a non-mandatory subject of bargaining that either party may propose changing so long as it does not insist on its proposal to impasse.") *See also Oil Chemical Atomic Workers v. NLRB*, 486 F.2d 1266, 1268 (D.C. Cir. 1973) ("[A] party may not be forced to bargain on other than a unit basis.").

A Not to my recollection.

Q Well, that's a different answer. Did Mr. Prete do that or don't you remember if Mr. Prete made that request?

A We never had any conversation to that effect that we would bargain one and then subsequently the others.

Q So now you remember that -- that conversation did occur?

A There was no agreement made. We had some oral conversation back and forth.

Q Okay. Well, let me back up then. Did Mr. Prete propose bargaining separate contracts for each of the four bargaining units of Santa Fe Springs?

A There was no agreement to that made, sir.

Q I didn't --

JUDGE GIANNOPOULOS: That wasn't the question. The question was whether he proposed it. Correct?

MR. RIPPLE: Correct.

JUDGE GIANNOPOULOS: The question was whether Mr. Prete proposed it not whether there was an agreement.

(Trs. 156-157). Even after this exchange, Mr. Van Wie could not decide if the issue was ever discussed or if he could not remember if the issue was discussed:

Did Mr. Prete in those telephone conversations in June propose to bargain separate contracts for all four bargaining units at Santa Fe Springs?

A There was no conversation to that effect.

Q He never made that proposal?

A Not to my recollection, sir.

Q Did he ever say or propose that we would start with the technology group as they are the first unit certified to conduct negotiations?

A There was no conversation to that effect, sir.

Q On those June telephone calls there was -- that was never discussed?

A Not to my recollection.

(Trs. 157-158). Mr. Van Wie's testimony regarding the subjects discussed in his June 2016 telephone conferences simply is not credible. At best, Mr. Van Wie simply could not remember what the gentlemen talked about on those occasions. At worst, Mr. Van Wie attempted in his testimony to avoid admitting that the subject was discussed.

Furthermore, the parties' behavior during bargaining in 2016 further evidences that the parties agreed to negotiate a single unit at a time beginning with the Technology Department unit. The evidence at the hearing was clear. Cytec and the IAM bargained throughout the summer and fall of 2016 for the Technology Department bargaining unit and only the Technology Department unit. The parties met from August to December to bargain for the Technology Department bargaining unit.³ The Union had not proffered any explanation for why it only bargained for the Technology Department unit for this extended period and did not insist on bargaining for the other bargaining units during this time. The concept of Ockham's Razor suggests that the simplest explanation is the most plausible one: the Union bargained for only the Technology Department unit because it had agreed, as described by Mr. Prete, to bargain that contract first before moving onto the other units.

C. The parties' ground rules were designed to facilitate reaching collective bargaining agreements for all the units at the Santa Fe Springs facility

The parties' agreement was designed to facilitate collective bargaining and assist the parties in reaching agreements for all the bargaining units. The bargaining units are small,

³ Although the parties' negotiations in December broke down over a dispute regarding the proper scope of the Technology Department unit, and whether the Source One temporary employees were part of that unit, it is undisputed that the parties had agreed to meet in December to bargain again for the Technology Department unit alone.

located at the same facility, and subject to the same direct management reports and work rules. Undoubtedly, many similar or identical issues would be raised in each set of negotiations. Meeting four separate times, more or less simultaneously, to discuss the same issues for four bargaining units would have been a waste of bargaining time and resources. By focusing on reaching an agreement for the Technology Department bargaining unit, the IAM and Cytec would be able to resolve and reach agreement on many of these common issues. The agreement for the Technology Department bargaining unit could then form the framework for agreements for the other bargaining units. The parties agreed to bargain in this fashion to streamline their negotiations.

Indeed, this is exactly what occurred. The parties completed bargaining for Technology Group and the employees ratified the contract on October 24. Less than a month later, employees in the other bargaining units ratified their contract.

D. The Union acted in bad faith when repudiated the ground rules in order to pressure Cytec to bargain on other than a unit basis

On December 14, 2016, the IAM repudiated the parties' agreement and demanded to meet to bargain agreements for the Conversion, Shipping, and Quality Assurance bargaining units. After months of bargaining for the Technology Department alone, the Union now demanded to bargain simultaneously for all the Santa Fe Springs bargaining units. In that time period, the IAM had never requested to meet for these units and had abided by the parties' agreement to focus on the Technology Department bargaining unit. The timing of the Union's requests was not coincidental.

The IAM's bargaining demand coincided with Cytec's rejection of the Union's demand that the parties include the Source One temporary employees in the Technology Department unit. Unhappy with the Company's position, the Union repudiated the parties' ground rules and demanded that the parties negotiate agreements for all the bargaining units

simultaneously. The Union did not demand to bargain for the other units in the hope of reaching agreements with Cytec on those units. By abandoning the parties' agreement, the IAM was attempting to pressure Cytec into accepting their permissive proposal to include the Source One employees in the Technology Unit. Had Cytec acquiesced to their proposal, the IAM, presumably, would have been content to continue bargaining just for the Technology Department.⁴

As the Board considered Cytec's Request for Review, the Union also used its demands to bargain for the remaining Santa Fe Springs units to pressure Cytec to accept the Union's ultimate goal – a single master collective bargaining agreement that covered all the units. Indeed, the Union would have always preferred to negotiate one single contract for all four bargaining units. Mr. Van Wie had made this proposal during his initial conversations with Mr. Prete in June 2016 and then again on the eve of bargaining in August 2016. Mr. Prete rejected those proposals.

The IAM, however, never abandoned their preference for coordinated bargaining. In January 2016, after repudiating the parties' agreement, Mr. Van Wie again requested bargaining for all the units and provided an identical set of dates for each unit. Again, Mr. Van Wie clearly hoped that Cytec would agree to negotiate a single contract for all the units, rather than be faced with the possibility of negotiating four contracts at the same time with four different Union bargaining teams.

In March 2017, Mr. Brewer again proposed to Mr. Prete that the parties meet to bargain a single agreement for all of the bargaining units at Santa Fe Springs. When Mr. Prete rejected this proposal yet again, Mr. Brewer told Mr. Prete that the IAM would agree to meet for

⁴ The IAM has relied on the Regional Director's "Corrected – Certification of Representative" to justify its bargaining position on December 13 and 14. The Regional Director, however, did not issue the corrected certification until December 16, 2016.

a single bargaining unit, but only with the understanding that any tentative agreement reached for that bargaining unit would also be considered a tentative agreement for the other bargaining units. This too was a demand for coordinated bargaining.

As discussed above, in assessing whether repudiation (or adherence) to ground rules violates the Act, the primary question, is whether the ground rules “that made sense for bargaining when entered into, have come to thwart or become a stranglehold on the bargaining process at a later date.” *Beacon Sales Acquisitions, Inc.*, 357 NLRB 789, 797 (2011). In this case, there is no evidence that the parties’ agreement had begun to hinder or thwart negotiations for the Technology Department unit. The rationale behind the parties’ original agreement was just as valid in December 2016 as it was when the parties made their initial agreement, if not more so. By then, the parties had bargained on eight occasions for the Technology Department and had reached many tentative agreements on non-economic terms.

The Union choose to interrupt this momentum and progress by insisting on a permissive subject of bargaining – the inclusion of the Source One unit in the Technology Department unit. The Board rejected the Union’s position. Cytec had been entitled to refuse to bargain for such a combined unit. The Union’s insistence to the contrary (and the Union’s general preference for coordinated bargaining) cannot constitute “changed circumstances” that rendered the parties’ ground rules or Cytec’s insistence on following them unreasonable or unlawful. The Union’s insistence on a permissive subject of bargaining cannot logically be the basis on which to find that reasonable ground rules became unreasonable. To find otherwise would encourage parties to take unlawful bargaining positions in bad faith in order to escape reasonable ground rules they no longer wished to follow. A party that engages in such activity cannot be so rewarded. The

allegations that Cytec violated Sections 8(a)(5) and (1) of the Act for refusing to bargain initial contracts for Conversion, Quality Assurance, and Shipping/Receiving units should be dismissed.⁵

III. NOTWITHSTANDING THE GROUND RULES, CYTEC WAS WILLING TO MEET WITH THE UNION AT REASONABLE TIMES AND PLACES TO BARGAIN CONTRACTS FOR THE SANTA FE SPRINGS BARGAINING UNITS

This is not a typical refusal to bargain case in which an employer refuses to recognize and bargain with a union. Cytec recognizes the Union as the collective bargaining agent for the original four units certified by the Board. Furthermore, Cytec has never refused to bargain collective bargaining agreements for the units. Indeed, Cytec's willingness to engage in organized and efficient bargaining with the Union was entirely reasonable.

The obligation to bargain collectively incorporated in Section 8(d) of the Act requires an employer and the representative of the employees "to meet at reasonable times and confer in good faith" to reach a collective bargaining agreement. 29 U.S.C. § 158(d). The requirement that such bargaining sessions occur at "reasonable times" is intentionally general. Bargaining does not occur in a vacuum, and the Board has recognized that Section 8(d) does not require that bargaining sessions occur on a particular schedule. Instead, the circumstances of each bargaining relationship must be examined individually:

Section 8(d) of the Act requires that an "employer and the representative of the employees . . . meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . ." The Board considers the totality of the circumstances when determining whether a party has satisfied its duty to meet at reasonable times.

⁵ Prior to Cytec filing its brief, Counsel for the General Counsel served a copy of his brief on Cytec. Cytec acknowledges and appreciates that Counsel for the General Counsel has recognized that a bargaining order is inappropriate in this case now that the Union and Cytec have reached collective bargaining agreements for all the Santa Fe Springs bargaining units. (GC Brief, p. 60, fn40). Cytec continues to believe, in any event, that a bargaining schedule would have been an extraordinary remedy in this case.

Garden Ridge Management, Inc., 347 NLRB 131, 132 (2006); *see also Calex Corp.*, 322 NLRB 977, 978 (1997) (considering the employer’s “overall conduct” in finding the employer engaged in a “pattern of delay”). Furthermore, application of Section 8(d) must also consider the dual purposes of the Act to foster collective bargaining and promote labor stability.⁶

Cytec’s position regarding the sequence of bargaining reflected the manner in which the Union organized the Santa Fe Springs units. The employees shared a community of interest: they worked in the same facility, under the same day-to-day supervision, and under the same work rules and conditions. The facility is not large, with less than forty employees. Had the employees been organized as a single unit, the logistics of bargaining a single collective bargaining agreement would have been straightforward.

The Union, however, organized the plant into four small bargaining units in a span of less than two months. The Union’s organizing strategy, permitted by the Board’s decision in *Specialty Healthcare*, 357 NLRB 934 (2011), had consequences on the logistics of bargaining. The parties now had to bargain four separate contracts. None of the units have more than fifteen employees; three of the units have no more than ten employees; and one unit has only four employees. Surely, given their community of interest and small size, many similar or common issues would be raised in each set of negotiations. Negotiating four separate contracts with similar proposals and issues simultaneously had the potential to be a logistical nightmare.

Cytec proposed to bargain first for the Technology Department unit, and then move on to the other units sequentially, as a means of streamlining negotiations and easing these logistical issues. Cytec’s approach allowed the parties to focus on resolving and reaching

⁶ “[T]he fundamental policy of the Act is to safeguard the rights of self-organization and collective bargaining, and thus by the promotion of industrial peace to remove obstructions to the free flow of commerce as defined in the Act.” *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 257 (1939).

agreement on many common issues that could then form the framework for agreements for other bargaining units, hopefully resulting in quicker negotiations for the other bargaining units. For example, the parties could focus on the development of a grievance and arbitration procedure, a contract feature that would undoubtedly be similar for all the units. Cytec's approach was not designed to frustrate bargaining, but rather engage in more efficient negotiations – a benefit to Cytec, the Union, and the bargaining unit employees.

Contrast Cytec's approach with the Union's demands to bargain all four contracts simultaneously. The Union would have had the parties "juggle" negotiating four agreements simultaneously. In fact, Mr. Van Wie suggested that all four contracts would be bargained on the same days, with a different IAM business agent negotiating each contract. (JX1(z)). Imagine the confusion that negotiating under those circumstances could cause. Using the example from above, instead of bargaining a single grievance and arbitration procedure, four separate bargaining groups would bargain four separate grievance and arbitration procedures, perhaps literally on the same days and times, with no continuity between the negotiations. Such bargaining would have been tremendously repetitive and inefficient. Moreover, the negotiations could lead to different approaches to common issues affecting employees working side-by-side in different bargaining units. Such an approach does not promote labor stability, and, frankly, is not reasonable in light of the circumstances.

In the end, Cytec's approach was vindicated. After the hearing, the parties continued negotiating and reached an agreement for the Technology Department unit that the bargaining unit ratified on October 24, 2017. As Cytec expected, negotiations for the remaining units were then streamlined and more efficient. The parties reached an agreement covering the other units in short order and that contract was ratified on November 10, 2017.

Cytec's obligation is to "to meet at reasonable times and confer in good faith" to reach collective bargaining agreements for the bargaining units. When the totality of the circumstances are examined, especially in light of the purposes of the Act, Cytec's proposal regarding the sequencing of bargaining for the Santa Fe Springs units is entirely reasonable. The allegations that Cytec violated Section 8(a)(5) of the Act by refusing to bargain with the IAM are meritless and must be dismissed.

IV. CYTEC FULLY RESPONDED TO THE UNION'S INFORMATION REQUESTS

Paragraph 11 of the Second Amended Complaint alleges, and the Company admitted, that the Charging Party Union requested, on or about August 10, 2016, from the Company related to the Union's concerns that the Company was prohibiting the bargaining unit from speaking Spanish, in particular, the "Day Training Check list," the Company's anti-discrimination policies, and signed copies of the "Day Training Check list." The Second Amended Complaint further alleges that Cytec refused to provide such information. (2nd Con. Compl. ¶11), and that such a refusal violated Section 8(a)(1) and (5) of the Act. (2nd Con. Compl. ¶19).⁷

At hearing, however, Counsel for the General Counsel withdrew the allegations of the Second Amended Complaint as they pertained to unsigned copies of the "Day Training Check list" and the Company's anti-discrimination policies.⁸ (Trs. 149-153). The General Counsel now only alleges that the Company has failed to provide signed copies of "Day Training Check list." The evidence presented at hearing, however, demonstrates that even the General Counsel's remaining allegations are without merit. Cytec responded to the Union's information request.

⁷ On November 21, 2017, Counsel for the General Counsel informed Respondent's counsel that the General Counsel was withdrawing these allegations.

⁸ The Second Consolidated Complaint also contained additional allegations that Cytec had failed to respond to other information requests made by Union. (2nd. Con. Compl. ¶¶10, 12, 13, 15, 19). At the beginning of the second day of the hearing, however, Counsel for the General Counsel likewise withdrew these allegations. (Trs. 149-153).

On April 21, 2017, Jerry Prete send correspondence to Dave Brewer via e-mail that, among other items, addressed the Union's information requests:

In the spirit of continuing our commitment to bargain in good faith with the Union, we are resending the enclosed information responsive to the Union's requests. By providing this information, Cytec does not waive any rights, and expressly preserves them, regarding the appropriateness or reasonableness of the Union's requests and any applicable defenses to the Union's charge.

Attached to this email are:

- The SDS for untreated glass cloth;
- A spreadsheet containing the requested information regarding quality deficiencies and method improvements; and
- A copy of the Day Training Checklist. The Union also requested copies of Day Training Checklists signed by employees. The Company has reviewed its records and has not been able to locate any signed checklists. Should the Company locate any responsive documents at a later date, it will provide them to the Union.

(GC Exh. 27). Cytec, therefore, responded to the Union's information request. After a search of its records, the Company responded that it had no responsive documents to the request. Cytec could not produce what it did not possess and no way of obtaining. *Kathleen's Bakeshop, LLC*, 337 NLRB 1081, 1082 (2002); *CalMat Co.*, 331 NLRB 1084 (2000). Because Cytec did respond to the Union's request for signed copies of the "Day Training Check list," the General Counsel's remaining information request allegations must be dismissed.⁹

⁹ As the Administrative Law Judge noted at the hearing, the Second Consolidated Complaint only alleges that Cytec failed to respond to the Union's information requests. The Second Consolidated Complaint does not allege that the Company unduly delayed responding. The only issue raised by the Second Consolidated Complaint is whether Cytec responded to the information request. See *New York Post Corp.*, 283 NLRB 430, 431 (1987).

V. CYTEC LAWFULLY CHANGED THE STARTING AND BREAK TIMES OF BARGAINING UNIT EMPLOYEES AFTER CONSULTATION WITH THE UNION

The Second Amended Complaint alleges that Cytec unlawfully changed the times that bargaining unit employees took their one meal break and two rest breaks. (2nd Con. Compl. ¶18). It is undisputed that Cytec made changes to the meal and rest break times of bargaining unit employees. Contrary to the allegations of the Second Amended Complaint, Cytec did not act unilaterally without Union involvement or approval.

As detailed above, before Cytec made any changes to the starting times or meal/rest breaks, Paul Pleskacz, the Production Area leader, met with union steward Alonso Barragan “to get his input” on the idea of moving the start time for conversion department employees to 5 a.m. Mr. Barragan agreed to the proposal. Several days later, Mr. Barragan approached Mr. Pleskacz with a proposal of his own to modify the start times of Technology Department employees. Mr. Barragan and Gonzalo Fargoza, the other union steward in the facility, were then present when the new starting times were communicated to employees. As discussed above, Cytec believed that the new starting times also required a modification of the employees’ rest and meal breaks, and again Mr. Barragan and Mr. Fargoza were consulted and agreed to the changes.¹⁰

The changes to starting times and meal/rest break periods, therefore, were not done unilaterally, but only after consultation with Union agents and obtaining their agreement. A union, like a corporation or any other legally created entity, only acts through its agents. In determining whether an individual is an agent of the union, common law agency principles provide the framework for analysis. *Cal. Portland Cement Co. v. NLRB*, 19 Fed. Appx. 683, 684 (9th Cir.

¹⁰ Cytec anticipates that the Union will argue that Ms. Peralta’s understanding of California law was incorrect. Such an observation is irrelevant. No matter the reason that the Company believed that the change in start times necessitated a change in the rest/meal break times, the record evidence demonstrates that Mr. Barragan and Mr. Fargoza were consulted and agreed to the changes.

2001). Under that framework, apparent authority arises from a Union's manifestations to a Company that permit the party to believe the principal has authorized the alleged agent to act on its behalf. *NLRB v. Donkin's Inn*, 532 F. 2d 138, 141 (9th Cir. 1976).

In *Southern Newspapers, Inc.*, 255 NLRB 154 (1981), the Board, as part of its Section 10(b) analysis, analyzed whether notice of a unilateral shift change to a certain member of the bargaining unit constituted notice to the union.

One question here, is Moore's status. As described above, Moore is closely tied to the Union, in addition to being one of Respondent's unit employees. Moore was fully advised of Respondent's actions following the fire, since she was a participant in those actions. Moore worked closely with the Union, and attended all of the approximately 25 or 30 negotiation sessions. She was more than a union steward, and her knowledge of Respondent's actions relating to the shift changes, was the Union's knowledge. If she did not advise the Union of what was happening, that fact would be surprising, but it is irrelevant herein. What is relevant is the fact that she was fully aware of what Respondent was doing.

Id. at 160. In *Southern Newspapers*, the Board focused on the employee's status as a union steward coupled with her presence at the bargaining table in determining that she was an agent of the Union.

Mr. Barragan and Mr. Fargoza were not just employees in the bargaining unit. The Union had designated them as Union stewards for all the employees in the facility and communicated that designation to Cytec. Notably, the Union did not designate individual stewards for each bargaining unit they represented, but instead selected Mr. Barragan and Mr. Fargoza to represent all the employees in the bargaining units. Moreover, Mr. Barragan and Mr. Fargoza were more than just stewards. As was the case in *Southern Newspapers* above, they also represented the Union at the bargaining table. Both gentlemen had been at every bargaining session prior to these changes in March 2017.

Indeed, Mr. Barragan clearly believed that he had the authority to represent the Union in discussing proposals related to starting times and meal/rest periods. He not only agreed to the Company's proposal, he also made a proposal himself to change the start times for Technology Department employees to match the start times of the Conversion Department employees. The Union and Mr. Barragan held the union steward out to the Company as having the authority to represent the Union in discussing workplace issues, including proposals related to starting times and meal/rest periods.

The Company not only provided the Union, through its designated representatives, notice of its proposal to change the starting time for conversion unit employees and the opportunity to bargain, the Company obtained the agreement of the Union. Furthermore, the proposal to change the start time for Technology Department employees originated with the Union. Similarly, Ms. Peralta met with the Union stewards to discuss and receive their agreement for the changes to meal and rest break times and the new work rule regarding not leaving Company property during rest breaks.

The allegations of the Second Amended Complaint alleging that Cytec acted unilaterally and unlawfully are without merit, and should be dismissed.

VI. NO EVIDENCE EXISTS TO DEMONSTRATE THAT CYTEC CHANGED THE BREAK TIMES OF BARGAINING UNIT MEMBERS IN RETALIATION FOR PROTECTED ACTIVITY.

The Second Amended Complaint also alleges that Cytec promulgated the work rule prohibiting employees from leaving the Company's property during their breaks to discourage employees from assisting the Charging Party or engaging in other concerted activity and discouraging membership in the Union. (2nd Con. Compl. ¶¶18(b) and 20). Specifically, Counsel for the General Counsel argued that the work rule was promulgated in retaliation after members

of the bargaining unit authorized a strike. The evidence introduced at the hearing, however, fails to support these allegations, and they must be dismissed.

Cytec anticipates that the Counsel for General Counsel or the Union will argue that the Company implemented this new work rule to prohibit or prevent union meetings during the lunch break after the Union used one of these lunch time meetings to authorize the two-day strike in late March/early April, 2017. This new work rule, however, did not prohibit employees from leaving the property during their unpaid lunch breaks, only during their paid rest breaks. Even under this work rule, the Union could continue to meet with its members during their lunch break. The work rule would not have prevented the strike vote or any future lunch break meetings.

Moreover, Counsel for the General Counsel presents no direct evidence in support of this theory, but rather relies on a circumstantial case based on timing alone:

- The Union conducted its strike authorization vote on March 30, 2017. The strike vote took place during the employees' lunch break on property directly across the street from Cytec's facility in plain view of the facility's parking lot.
- During the strike vote, two Company supervisors, Charlie Schreier and Chris Johnson were seen for several minutes in Cytec's parking lot.
- Union business representatives learned of the new work rule later on the same day of the strike vote.

From this sparse facts, Counsel for the General Counsel's theory is that Mr. Schreier and Mr. Johnson must have overheard or deduced the purpose of the Union meeting and reported it to Company management, who then decided to issue the new work rule.

Counsel for the General Counsel, however, presents no evidence to support this conspiracy theory. There is no hearing evidence regarding what Mr. Schreier and Mr. Johnson heard or saw while in the Company parking lot. There is no evidence that either gentlemen reported anything about the Union meeting to other members of Company management, and no evidence that these gentlemen were involved in the promulgation of the new work rule in question. Notably, Counsel for the General Counsel could have subpoenaed both Mr. Schreier and Mr. Johnson to testify at the hearing and provide evidence which would have answered these and other questions. Counsel for the General Counsel chose not to do so, and instead choose to rely on timing alone. This is insufficient to support the allegation of the Second Consolidated Complaint and it must be dismissed.

Moreover, the evidence introduced at the hearing does not support the timeline put forth by Counsel for the General Counsel. Reyna Peralta, Cytec's Human Resources Manager at the Santa Fe Springs facility, testified that the new work rule was announced to employees in the same meeting that the new start times and meal/rest break periods was announced. (Trs. 441-443). Ms. Peralta had begun to work at Cytec on March 13, 2017, and testified that these changes were first discussed both amongst management and with Alonso Barragan and Gonzalo Fargoza during her first week of employment. (Trs. 419-421). Likewise, Paul Pleskacz testified that the new starting times for Conversion Department employees took effect the following Monday, March 20, 2017. (Trs. 399). The start time for Technology Department employees was the following Monday, March 27, 2017. (Trs. 402). These changes and the new work rule, therefore, were all in place prior to the Union's strike vote on March 30, 2017 and the commencement of the strike on March 31.

The allegations of the Second Consolidated Complaint that Cytec promulgated a work rule to discourage employees from assisting the Charging Party or engaging in other concerted activity and discouraging membership in the Union is without merit. The allegations should be dismissed.

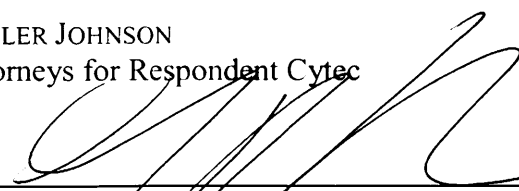
CONCLUSION

For the reasons above and set forth during the hearing, and based upon the record as a whole, Cytec respectfully asks that the Complaint be dismissed in its entirety.

MILLER JOHNSON
Attorneys for Respondent Cytec

Dated: November 22, 2017

By


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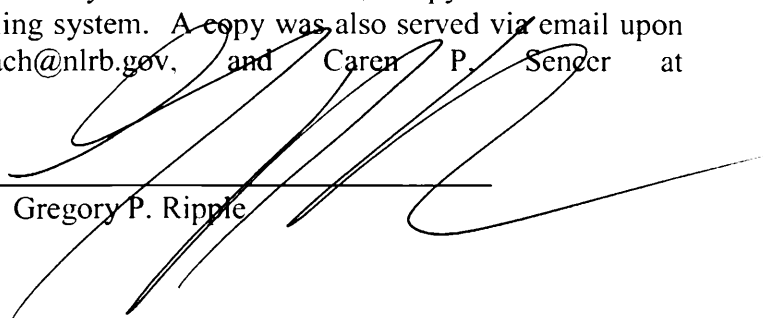
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CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of November, 2017, a copy of this document was e-filed using the NLRB's electronic filing system. A copy was also served via email upon Thomas Rimbach at thomas.rimbach@nlrb.gov, and Caren P. Sencer at csencer@unioncounsel.net.

Dated: November 22, 2017

By


Gregory P. Ripple